

REMARKS

Claims 1-26 are pending in the application. In an Office Action mailed October 24, 2003, Claims 1-3, 7, 11, 13-17, 20, and 23-26 were rejected under 35 U.S.C. § 102(e) and Claims 4, 5, 8-10, 18, 19, 21, and 22 were rejected under 35 U.S.C. § 103(a). Claims 6 and 12 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 2, 14, 21-24, and 26 have been amended to clarify the invention. Claims 6 and 20 have been canceled and Claims 27-37 have been added by way of this amendment. In view of the foregoing amendments and additions, and remarks that follow, applicants respectfully submit that the application is now in condition for allowance.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 1-3, 7, 11, 13-17, 20, and 23-26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,565,011, issued to Kuykendal et al. (hereinafter "Kuykendal"). Applicants respectfully disagree.

It is a well-settled axiom of patent law that in order to anticipate a claim, a reference must teach each and every element of that claim. Each and every element of a claim must either be expressly or inherently described in a prior art reference.¹ Thus, if every element of the claim is not described or suggested by the reference, the claim cannot be rejected under 35 U.S.C. § 102(e) as being anticipated by the prior art. Further, the elements described or

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

suggested in the reference must be arranged as required by the claim, although the terminology need not be identical.²

In view of the foregoing amendments to independent Claims 1, 14, 24, and 26, applicants submit that Kuykendal fails to teach or suggest each and every element of the foregoing claims. Thus, applicants respectfully submit that the rejection of Claims 1-3, 7, 11, 13-17, 20, and 23-26 under 35 U.S.C. § 102(e) is improper as set forth in further detail below.

1. Rejections of Claims 1-3, 7, 11, 13-17, 20, 23, and 26 Based on Kuykendal

Independent Claims 1, 14, and 26 have been amended to contain the limitations recited in originally filed Claim 6, which the Examiner has indicated as containing allowable subject matter. Moreover, Claims 1, 14, and 26 have been amended to recite that the high-speed fluid jet blocker includes a blocking element that is substantially spherical in shape and rotatably mounted on the blocking bar, wherein impingement of the high-speed fluid jet upon the surface of the blocking element imparts rotational movement to the blocking element. Therefore, inasmuch as Claims 1, 14, and 26 recite at least the above subject matter which has been indicated in the Office Action as containing allowable subject matter not taught or suggested by Kuykendal, applicants respectfully request that the 35 U.S.C. § 102(e) rejection of Claims 1, 14, and 26, and those claims which depend thereon, be withdrawn.

2. Rejections of Claims 24 and 25 Based on Kukendal

Independent Claim 24 has been amended to contain the limitations recited in originally filed Claim 12, which the Examiner has indicated as containing allowable subject matter. Moreover, Claim 24 has been amended to recite that the high-speed fluid jet blocker includes a blocking bar that is pivoted between a first and a second limit stop, so that when the blocking bar

² *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

is against the first limit stop, the blocking bar is in the open position and when against the second limit stop, the blocking bar is in the blocking position, wherein the first or the second limit stop is comprised of a portion of the first electromagnet assembly extending into the rotational path of the blocking bar, thereby blocking further rotation of the blocking bar. Therefore, inasmuch as Claim 24 recites at least the above subject matter which has been indicated in the Office Action as containing allowable subject matter not taught or suggested by Kuykendal, applicants respectfully request that the 35 U.S.C. § 102(e) rejection of Claim 24, and Claim 25 which depends thereon, be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 4, 5, 8-10, 18, 19, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuykendal in view of either U.S. Patent No. 5,685,482, issued to Sickles (hereinafter "Sickles"); U.S. Patent No. 5,931,178, issued to Pfarr et al. (hereinafter "Pfarr"); or U.S. Patent No. 5,259,416, issued to Kunz et al. (hereinafter "Kunz"). Applicants respectfully disagree.

As is well known, the Office Action bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Independent Claims 1 and 14 have been amended to recite the limitations recited in originally filed Claim 6, which the Examiner has indicated as containing allowable subject matter. Moreover, Claims 1 and 14 have been amended to recite that the high-speed fluid jet blocker includes a blocking element that is substantially spherical in shape and rotatably mounted on the blocking bar, wherein impingement of the high-speed fluid jet upon the surface of the blocking element imparts rotational movement to the blocking element. Therefore, inasmuch as Claims 1 and 14 recite at least the above subject matter which

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{LLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

has been indicated in the Office Action as containing allowable subject matter not taught or suggested by Kuykendal in view of either Sickles, Pfarr, or Kunz, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claims 1 and 14, and those claims which depend thereon, be withdrawn.

New Claims 27-37

New Claims 27-37 have been added to further point out and distinctly claim the novel aspects of the claimed embodiments of the present invention. Applicants submit that the prior art, alone or in combination, does not teach or suggest applicants' claimed embodiments of the present invention as recited in Claims 27-37. More specifically, Claim 27 is substantially originally filed Claim 1 amended to generally include the limitations recited in originally filed Claim 12, which the Examiner indicated in the Office Action would be allowable. Therefore, applicants submit that new Claim 27 and those claims which depend thereon are allowable over the prior art.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

CONCLUSION

In view of the foregoing remarks and amendments, applicants respectfully submit that the present application is in condition for allowance. Reconsideration and reexamination of the application, as amended, and allowance of the claims at an early date is solicited. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact applicants' undersigned attorney at the number below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Brian D. Krell
Registration No. 51,899
Direct Dial No. 206.695.1638

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date:

January 23, 2004

Steph A. Jones

BDK:slj